AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 9: Liberalism Divided – Separation of Powers/ Nondelegation of Legislative Powers

**Johnson v. Pearce, 313 So.2d 812 (LA 1975)**

*In July 1967, Jessie Johnson sold a cow to a stockyard that was infected with brucellosis, a disease that can be transmitted to humans. The Louisiana state Livestock Sanitary Board requested that Johnson pen the remainder of his cattle for testing. When he refused, his herd was quarantined. Johnson still refused to comply, and the department of agriculture sought a judicial order compelling him to pen his cattle until they were tested but those efforts were defeated for various technical reasons. In April 1970, Johnson sold three bull calves without a valid negative brucellosis test certificate. The commissioner of agriculture again brought suit against Johnson, this time for violating a livestock board regulation that prohibited selling any cattle from a quarantined herd without a valid negative test certificate. The judge dismissed the case on the grounds that the herd had never been subjected to a legally valid quarantine, and Johnson eventually won damages for malicious prosecution. The agriculture commissioner appealed, and the case was transferred to the state supreme court given a constitutional question raised in the case. The state supreme court reversed the malicious prosecution award. In an 8-1 decision, it also upheld the constitutional validity of the state law that sought to suppress the spread of infectious diseases in cattle, holding that the statute was an unconstitutional delegating of lawmaking power to the livestock board.*

Justice BARHAM.

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The enactment of laws to prevent the spread of infectious and contagious diseases among domestic animals is universally recognized as a proper exercise of police power by a legislative body. The federal government, under authority of the Commerce Clause, United States Constitution Article 1, § 8, Clause 3, first enacted regulations for suppression of diseases in livestock by Act May 29, 1884. . . .

The federal statutes providing for the suppressing and preventing of disease in livestock have been held constitutional. More specifically the statutes have been held not to contain an improper delegation of legislative functions. *Kansas City Southern Railway Co. v. United States* (8th Cir. 1923).

Almost all, if not all, of the states of this Union have joined with the Secretary of Agriculture in cooperative federal-state programs for the control and eradication of brucellosis in domestic animals. The only question for us to determine is whether the two statutes which attempt to align Louisiana with the community of interests of other states in fostering this program have met the necessary requirements for delegating rule-making power to an administrative body of the executive department We need to determine whether the statutes together or separately are infirm in that they fail to provide a declaration of policy and standards sufficient to admit of the delegation of power to the Livestock Sanitary Board to make rules and regulations to carry out a defined declaration of policy.

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As in the federal regulations, the State has set forth its determination that brucellosis should be eradicated. It has further provided that cattle herds are to be checked to determine if any of the herd are infected, that regulations should be drawn to protect other herds from infection, as well as protecting previously infected herds from reinfection. There can be no question that the legislature had the power to delegate to the Livestock Sanitary Board the power to adopt reasonable regulations and the tests it believed necessary for implementing the legislative purpose. This delegation is not a delegation of legislative power. The legislature has merely committed to a board of men with expertise the duty of drafting and revising rules and regulations as may be found necessary according to the times and circumstances.

Our statutes, as do the similar provisions of the federal government, authorize the control and eradication of brucellosis and empower an agency of the executive branch of government to supply the details for furthering that legislative policy through the use of veterinary science in a time when that science is changing and progressing too rapidly for the legislature to adopt any detailed long-range program. *United States v. Rock Royal Co-operative* (1938). . . .

Once the legislature has defined its policy to combat a disease or diseases among animals, the State, acting under its police power to protect the health, welfare and safety of the people, may confer upon administrative officers or bodies the power to adopt the rules and regulations to effectuate the legislative will. *Campoamor v. State Live Stock Sanitary Board* (FL 1938); *Ralston v. Hawes* (MA 1956); *Mulkey v. State* (TX 1918). . . .

We are of the opinion that our statutes have specifically established a definite policy of the State which permits an administrative body to make rules and regulations necessary for the administration and enforcement of that policy. They have clearly stated the purpose which the legislature seeks to accomplish. If the rules and regulations adopted by the Board exceed the limitations of that purpose, redress may be had in the courts. There is no delegation of the legislative power. . . .

*Reversed*.

Justice SUMMERS, dissenting.

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The principal thrust of the constitutional attack, as the majority recognizes, is that Section 2223 contains an overbroad delegation of legislative authority to an administrative board without outlining proper guidelines. Specifically, it is asserted that the law sets no standards for imposing the sometimes awesome economic sanction which results from a prolonged quarantine of an entire herd. As the plaintiff Johnson testified, the quarantine compelled him to retain on his premises all the accretion from his herd during eight years. Aside from the fact that he was deprived of the right to sell any portion of this pure bred herd of valuable animals, except for slaughter, and therefore received no income to carry on his operation, the increase in the herd overcrowded his pastures, hindering the growth of grass and requiring that he purchase feed to sustain the animals.

The sole authority for the imposition of quarantine is to be found in Section 2223. In a vague and general way the section provides: "The Livestock Sanitary Board may promulgate necessary rules and regulations to carry out the eradication of brucellosis, and necessary quarantine regulations to prevent the reinfection of livestock."

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The Constitution of 1921, under which this case falls, declares that "The legislative power of the State shall be vested in a Legislature, which shall consist of a Senate and a House of Representatives." These powers which the constitution invests in the legislature cannot be delegated to any body or authority. Thus, "The general rule is that any statute or ordinance that purports to vest arbitrary discretion in a public officer, without prescribing a definite rule for his guidance, is unconstitutional." *City of Shreveport v. Herndon* (LA 1925). . . .

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Considered under these elementary and fundamental principles, Section 2223 grants the Board the authority to promulgate quarantine regulations to prevent the reinfection of livestock, without a single basic standard or rule of action for the guidance of the Board which is to administer the rules it promulgates. That is to say, the board may promulgate and enact rules and regulations for invoking quarantine as it deems fit in its sole and unhampered discretion. In fact, in this case, no rules or procedure have been established for invoking quarantine. Quarantine was imposed over plaintiff's herd by the heavy hand of the Board without establishing in any proceeding at any time that plaintiff's herd was infected. . . .

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The objectionable features of this legislation do not arise from the fact that details of regulation are left to the administrative agency. What is objectionable about this legislation is that no primary standard is recited whereby the administrative agency is guided in invoking quarantine. As a result no regulations are prescribed and quarantine is imposed at the discretion of the Board.

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Even if it be conceded for argument that there was no unconstitutional delegation of legislative authority to the Board as a result of the broad and general authority conferred by Section 2223, the fact remains that Section 2223 is unconstitutional for another reason. The statute permitted the Board to impose this protracted and ruinous quarantine without according plaintiff notice or a hearing, thus denying him due process of law. Surely plaintiff has a valuable property right to raise cattle on his land to earn his livelihood free of unreasonable and unconstitutional restraint. The effect of the quarantine was to deprive him of this substantial property right. The economic loss resulting from the quarantine is uncontested in this record. Nor is it established in this record that any basis existed for the quarantine. . . .

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The guaranty of due process of law is one of the most important to be found in the federal or state constitutions. It is the very essence of a scheme of ordered justice, without it the right of private property could not be said to exist in the sense in which it is known to our laws. No government, federal or state, may deprive a person of property except by observing its requirements.

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Due process is an elusive concept, and its exact boundaries are undefinable. Thus its content varies according to specific factual contexts. However, it is universally recognized that when governmental agencies adjudicate or make binding determinations which directly affect legal rights of individuals, it is imperative that those agencies use procedures which have traditionally been associated with judicial process. *Hannah v. Larche* (1960).

Other states which have Bang's disease eradication laws do not confer a blanket authority to administrative bodies to impose quarantine the way Section 2223 does. . . .

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In my view the quarantine in this case offends every concept of due process. The board's actions were arbitrary and without legislative or administrative guidelines. The quarantine was imposed without notice or hearing. Plaintiff has suffered grievous loss of property and has had no opportunity to present his side of the case to the administrative body responsible for the quarantine.

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